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10/602,495

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Darrell James Shelton

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09/13/2006

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EXAMINER

HUYNH, KHOA D

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/602,495

Applicant(s)

SHELTON, DARRELL JAMES

Examiner

Khoa D. Huynh

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 45-53, 60-67 and 75-113 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 45-53, 60-67 and 75-113 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. In accordance with the telephonic interviews (see response to election filed on 10/24/2005), the restriction requirement between the Groups is hereby withdrawn.

However, applicant's election of Species IV in the reply filed on 10/24/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant indicates in the reply that claims 45-53, 60-67 and 75-113 are readable on the elected species. Accordingly, claims 45-53, 60-67 and 75-113 will be entered for examination.

### ***Drawings***

2. The drawings, especially Figures 4, 6A, 6B and 7, are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the angle between the first portion and the second portion is adjustable as recited in claim 101 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

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is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. Claim 83 is objected to because of the following informalities: the recitation "claim 83" should be changed to read --claim 82--. Appropriate correction is suggested.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 101 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claim 1 recites the limitation "the angle between the first portion and the second portion is adjustable". Such claimed subject matter was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

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had possession of the claimed invention. Since the recited limitation is not supported by the original disclosure, it constitutes new matter.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 66 and 101-109 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 66, the phrase "can be" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention.

Regarding claim 101, claim 101 recites "an angle between the first portion and the second portion is adjustable". Such recitations render the claim indefinite since it does not have detailed support in the instant specification. Since the claim does not clearly set forth the metes and bounds of the patent protection desired, the scope of the claim is unascertainable. Claims 102-109 depend on claim 101 and are likewise indefinite.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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9. Claims 45-50, 60-64, 67, 75-79, 81, 82, 84-87, 89, 90, 92-96, 98, 99, 101-105, 107, 108, 110 and 111, as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Banks, Jr. et al. (5682626).

Regarding claim 75, the Banks, Jr. et al. reference discloses a device (10) for supporting a human. The device includes a support surface for supporting the human on its surface, wherein the support surface including a seat portion (at 20) and a back portion (constitute by elements 15 and the two vertical posts connected to element 15). The seat portion includes an aperture (constitute by the opening on element 20) opening toward the back portion so that when the human is supported on the support surface, the human's anus is positioned over the aperture. The aperture is inherently capable of providing access, from behind the human and behind the back portion of the support surface, to a lower spinal region of the human's anatomy. Furthermore, the Banks, Jr. et al. aperture is inherently capable of being used to inspect and administer medical services to an anal region of the human by accessing from behind the human and behind the back portion of the support surface by someone else other than the human to medically treat him or herself with afflictions such as hemorrhoids and cystitis, thus, when the device is used, medical services are inherently administering to the person, in the forms of cleansing, douching, irrigating using disinfectant agents through the aperture in the support surface.

Regarding claims 45, 49 and 50, the method as claimed would be inherent during the normal use and operation of the Banks, Jr. et al. reference.

Regarding claims 46-48, the method as claimed would be inherent because the Banks, Jr. et al. aperture is inherently capable of being used to inspect and administer medical services to an anal region of the human by accessing from behind the human and behind the back portion of the support surface by someone else other than the human to medically treat him or herself with afflictions such as hemorrhoids and cystitis, thus, when the device is used, medical services are inherently administering to the person, in the forms of cleansing, douching, irrigating using disinfectant agents through the aperture in the support surface.

Regarding claim 76, as schematically shown Fig. 1, the back portion has an aperture (about 22) that merges with the aperture in the seat portion.

Regarding claim 77, the means for viewing is inherently an aperture (about 22) on the back portion to view a portion of the human visible through the aperture.

Regarding claim 78, the tub (Fig. 1) inherently constitutes means for privacy to limit a view of the human.

Regarding claim 79, it is inherent that someone other than the human could move the device for one place to the other, and the someone constitute means for providing mobility to the support surface.

Claims 81 and 82, the device further includes armrests (17) coupled with the support surface for supporting the human's arms.

The Banks, Jr. et al. reference discloses a device (10) for supporting a human. The device includes a support surface for supporting the human on its surface, wherein the support surface including a seat portion (at 20) and a back portion (constitute by elements 15 and the two vertical posts connected to element 15). The seat portion includes an aperture (constitute by the opening on element 20). The aperture is inherently capable of providing access from behind the support surface and the aperture is capable of relieving and eliminating pressure on the human's anatomy including the sacral region and an area between the left and right cheeks of the buttocks below the human's spine. As schematically shown in Figure 1, a privacy panel (at W) to obstruct a view of the human supported on the support surface, wherein the privacy panel is releasably coupled with the support surface via a fastener (at 42). The seat portion for supporting the human's legs is flexibly coupled to the back portion. Regarding claims 60-64 and 67, the method as claimed would be inherent during the normal use and operation of the Banks, Jr. et al. reference.

Regarding claim 84, the Banks, Jr. et al. reference discloses a device (10) for supporting a human. The device includes a seat portion (at 20) having an aperture (constitute by the opening on element 20), and a back portion (constitute by elements 15 and the two vertical posts connected to element 15) having a second aperture (about 22). The seat portion and the back portion form a non-planar support surface to support a human. The first aperture and the second aperture form a composite aperture in the support surface, so that the

human's anus is proximate to the composite aperture. The composite aperture is inherently capable of providing access, from behind the human and behind the back portion of the support surface, to a lower spinal region of the human's anatomy.

Regarding claim 85, the means for viewing is inherently a person giving aids to the human standing on the back portion to view a portion of the human visible through the aperture.

Regarding claim 86, the tub (Fig. 1) inherently constitutes means for privacy to limit a view of the human.

Regarding claim 87, it is inherent that someone other than the human could move the device for one place to the other, and the someone constitute means for providing mobility to the support surface.

Claims 89 and 90, the device further includes armrests (17) coupled with the support surface for supporting the human's arms.

Regarding claim 92, the Banks, Jr. et al. reference discloses a device (10) for supporting a human. The device includes a back portion (constitute by elements 15 and the two vertical posts connected to element 15), a seat portion (at 20) having an aperture (constitute by the opening on element 20), and a frame (at 30) coupling the seat portion with the back portion, so that when the human is supported on the support surface, the human's anus is proximate to the aperture. The composite aperture is inherently capable of providing access, from

behind the human and behind the back portion of the support surface, to a lower spinal region of the human's anatomy.

Regarding claim 93, as schematically shown Fig. 1, the back portion has an aperture (about 22) that merges with the aperture in the seat portion.

Regarding claim 94, the means for viewing is inherently an aperture (about 22) on the back portion to view a portion of the human visible through the aperture.

Regarding claim 95, the tub (Fig. 1) inherently constitutes means for privacy to limit a view of the human.

Regarding claim 96, it is inherent that someone other than the human could move the device for one place to the other, and the someone constitute means for providing mobility to the support surface.

Regarding claims 98 and 99, the device further includes armrests (17) coupled with the support surface for supporting the human's arms.

Regarding claim 101 (as best understood), the Banks, Jr. et al. reference discloses a device (10) for supporting a human. The device includes a first portion (at 20) having an aperture (constituted by the opening on element 20), and a second portion (constituted by elements 15 and the two vertical posts connected to element 15) flexibly coupled with the first portion, wherein the angle between the first portion and the second portion is adjustable (during the assembly of the device), so that when the human is supported on the support surface, the human's anus is proximate to the aperture. The aperture is inherently capable of

providing access, from behind the human and behind the back portion of the support surface, to a lower spinal region of the human's anatomy.

Regarding claim 102, as schematically shown Fig. 1, the back portion has an aperture (about 22) that merges with the aperture in the seat portion.

Regarding claim 103, the means for viewing is inherently an aperture (about 22) on the back portion to view a portion of the human visible through the aperture.

Regarding claim 104, the tub (Fig. 1) inherently constitutes means for privacy to limit a view of the human.

Regarding claim 105, it is inherent that someone other than the human could move the device for one place to the other, and the someone constitute means for providing mobility to the support surface.

Regarding claims 107 and 108, the device further includes armrests (17) coupled with the support surface for supporting the human's arms.

Regarding claim 110, the Banks, Jr. et al. reference discloses a device (10) for supporting a human. The device includes a back portion (constituted by elements 15 and the two vertical posts connected to element 15) having an aperture (about 22), a seat portion (at 20) having an aperture (constituted by the opening on element 20) opening toward and merging with the aperture in the back portion to form a composite aperture wherein the human's anus is to be positioned proximate to the composite aperture, and a frame (at 30) coupling the seat portion with the back portion. The means for viewing is inherently an

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aperture (about 22) on the back portion to view a portion of the human visible through the aperture, and the tub (Fig. 1) inherently constitutes means for privacy to limit a view of the human.

Regarding claim 111, it is inherent that someone other than the human could move the device for one place to the other, and the someone constitute means for providing mobility to the support surface.

10. Claims 60, 65, 66, 75, 80-84, 88-92, 97-101, 106-110 and 112, as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Banks (6073277).

The Banks reference discloses a device (Fig. 1) for supporting a human. The device includes a support surface for supporting the human on its surface, wherein the support surface including a seat portion (at 11) and a back portion (13). The seat portion (at 11) includes an aperture (col. 2, lines 39-40). The aperture is inherently capable of providing access from behind the support surface and the aperture is capable of relieving and eliminating pressure on the human's anatomy including the sacral region and an area between the left and right cheeks of the buttocks below the human's spine. As schematically shown in Figure 1, the support surface includes a sloped portion (constituted by seat 11) that is used to support the human's legs. Also, the support surface further includes armrests (14), wherein the armrests are sloped such that the human's hand on the arms could be at different elevation than the human's elbow on the

arm. Regarding claims 60, 65 and 66, the method as claimed would be inherent during the normal use and operation of the Banks reference.

Regarding claims 75 and 80-83, the Banks reference discloses a device (Fig. 1) for supporting a human. The device includes a support surface for supporting the human on its surface, wherein the support surface including a seat portion (at 11) and a back portion (at 13). The seat portion includes an aperture (col. 2, lines 36-40) opening toward the back portion so that when the human is supported on the support surface, the human's anus is positioned over the aperture. The aperture is inherently capable of providing access, from behind the human and behind the back portion of the support surface, to a lower spinal region of the human's anatomy. As schematically shown in Figure 1, the seat portion (at 11) is sloped to position the human's buttocks lower than the human's knees when the human is supported on the support surface. Also, the support surface further includes armrests (14), wherein the armrests are sloped.

Regarding claims 84 and 88-91, the Banks reference discloses a device (Fig. 1) for supporting a human. The device includes a seat portion (at 11) having an aperture (col. 2, lines 36-40), and a back portion (13) having a second aperture (col. 2, lines 36-40). The seat portion and the back portion form a non-planar support surface to support a human. The first aperture and the second aperture form a composite aperture in the support surface, so that the human's anus is proximate to the composite aperture. The composite aperture is inherently capable of providing access, from behind the human and behind the

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back portion of the support surface, to a lower spinal region of the human's anatomy. As schematically shown in Figure 1, the seat portion (at 11) is sloped to position the human's buttocks lower than the human's knees when the human is supported on the support surface. Also, the support surface further includes armrests (14), wherein the armrests are sloped.

Regarding claims 92 and 97-100, the Banks reference discloses a device (Fig. 1) for supporting a human. The device includes a back portion (at 13), a seat portion (at 11) having an aperture (col. 2, lines 36-40), and a frame (at 12) coupling the seat portion with the back portion, so that when the human is supported on the support surface, the human's anus is proximate to the aperture. The composite aperture is inherently capable of providing access, from behind the human and behind the back portion of the support surface, to a lower spinal region of the human's anatomy. As schematically shown in Figure 1, the seat portion (at 11) is sloped to position the human's buttocks lower than the human's knees when the human is supported on the support surface. Also, the support surface further includes armrests (14), wherein the armrests are sloped.

Regarding claims 101 (as best understood) and 106-109, the Banks reference discloses a device (Fig. 1) for supporting a human. The device includes a first portion (at 11) having an aperture (col. 2, lines 36-40), and a second portion (13) flexibly coupled with the first portion, wherein the angle between the first portion and the second portion is adjustable (during the assembly of the device), so that when the human is supported on the support

surface, the human's anus is proximate to the aperture. The aperture is inherently capable of providing access, from behind the human and behind the back portion of the support surface, to a lower spinal region of the human's anatomy. As schematically shown in Figure 1, the seat portion (at 11) is sloped to position the human's buttocks lower than the human's knees when the human is supported on the support surface. Also, the support surface further includes armrests (14), wherein the armrests are sloped.

Regarding claims 110 and 112, the Banks reference discloses a device (Fig. 1) for supporting a human. The device includes a back portion (at 13) having an aperture (col. 2, lines 36-40), a seat portion (at 11) having an aperture (col. 2, lines 36-40) opening toward and merging with the aperture in the back portion to form a composite aperture wherein the human's anus is to be positioned proximate to the composite aperture, and a frame (at 12) coupling the seat portion with the back portion. The means for viewing is inherently an aperture on the back portion to view a portion of the human visible through the aperture, and the tub (Fig. 1) inherently constitutes means for privacy to limit a view of the human. As schematically shown in Figure 1, the seat portion (at 11) is sloped to position the human's buttocks lower than the human's knees when the human is supported on the support surface.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 113 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Banks, Jr. et al. (as discussed above).

Even though the Banks, Jr. et al. reference does not specifically disclose that each of the armrests configured with the front end higher than the back end as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Banks, Jr. et al. device by configuring the armrests with the front end higher than the back end to allow the human to comfortably rest the arms while leaning back against the back portion.

13. Claims 51-53, as presently understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Banks, Jr. et al. (as discussed above) in view of Kimura et al. (5461738).

The Banks, Jr. et al. reference DIFFERS in that it does not specifically include a device for capturing an electronic image as claimed. Attention, however, is directed to the Kimura et al. reference which discloses a device for supporting a human. The device includes a back portion (at 1), and a seat portion (6,7) having an aperture (8). The device also includes a device (col. 5, lines 55-67) for capturing a view of the human through the aperture (8) and wirelessly transmitting the captured electronic image to a display device.

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to have modified the Banks, Jr. et al. reference by employing a device for capturing an electronic image of the human, in view of the teaching of Kimura et al., in order to monitor the health of the human, for example, the digestive power of the internal organs.

14. Claims 51-53, as presently understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Banks (as discussed above) in view of Kimura et al. (5461738).

The Banks reference DIFFERS in that it does not specifically include a device for capturing an electronic image as claimed. Attention, however, is directed to the Kimura et al. reference which discloses a device for supporting a human. The device includes a back portion (at 1), and a seat portion (6,7) having an aperture (8). The device also includes a device (col. 5, lines 55-67) for capturing a view of the human through the aperture (8) and wirelessly transmitting the captured electronic image to a display device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Banks reference by employing a device for capturing an electronic image of the human, in view of the teaching of Kimura et al., in order to monitor the health of the human, for example, the digestive power of the internal organs.

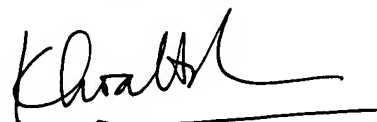
### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Khoa D. Huynh  
Primary Examiner  
Art Unit 3751